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MEMORANDUM

OG-07-05-543

Date: May 15, 2007

To: Ali DeBellas

From: Karen Hughes, Planning Director

A handwritten signature in black ink, appearing to read "KH", is written over the "From" line.

CC: DeAnn Johnson

Troy Renstrom

Applebury Survey

Ravalli County Clerk and Recorder

Ravalli County Board of County Commissioners

Ravalli County Attorney's Office

Subdivision File/SEA File/Outgoing Correspondence File

Re: Johnson Family Transfer Complaint

The purpose of this memo is to respond to your inquiries regarding DeAnn Johnson's subdivision and subdivision exemption applications at the front counter at the end of April. The information below regarding the timeline of these two submittals is offered for your consideration.

Background:

The Whispering Winds Expedited Minor Subdivision application was submitted to the Ravalli County Planning Department on July 21, 2005. During this time period the Planning Department had an extensive backlog of subdivision applications which were being worked on in order of submittal and as appropriate staff was available. Staff completed the first sufficiency review for the proposal on February 10, 2006. The application identified South Swamp Creek on the plat and stated that it drained an area less than 15 square miles. This information proved to be incorrect.

On May 16, 2006, Applebury Survey responded to the February 10th sufficiency letter. Staff completed a final sufficiency review on May 22, 2006. At the request of the Planning Director, the Ravalli County Floodplain Administrator is involved in the review of subdivisions where there

may be an impact on rivers or streams. Accordingly, the Floodplain Administrator was consulted on this subdivision. In email correspondence (Exhibit A-1) with the Ravalli County Floodplain Administrator (Laura Hendrix) dated May 22, 2006, staff noted that the subdivision was ready to be scheduled for the Board of County Commissioners' public meeting, but first needed confirmation that a floodplain analysis would not be required on South Swamp Creek. The Floodplain Administrator replied to the May 22nd email on May 23rd stating that a floodplain analysis or waiver would be required since South Burnt Fork Creek, located on the subject property, is subject to the Floodplain Analysis requirement of the Subdivision Regulations. (According to the County's Geographic Information System (GIS) the property is located at the site of a significant confluence. South Burnt Fork Creek comes in from the east and separates in the center of the property into Robertson Creek and South Swamp Creek. The Burnt Fork Drainage has a significant drainage area.) South Burnt Fork Creek and Robertson Creek had not been shown on the original application, otherwise we would have requested this information in our first review. As noted above only South Swamp Creek was shown on the original plat provided to the Planning Department.

Applebury Survey was contacted via phone and given the information regarding the need for a floodplain analysis. Terry Nelson subsequently met with staff on June 2, 2006, to discuss the matter. (Renee VanHoven, Laura Hendrix, and Tristan Riddell all participated in the discussion.) During this meeting Laura Hendrix provided Mr. Nelson with a copy of the United States Army Corps of Engineers' Lower Burnt Fork Creek Alluvial Fan Drainage study and explained that the subject property was located on the Burnt Fork Alluvial Fan. She mentioned that the Federal Emergency Management Agency (FEMA) may consider adopting this study as a regulatory floodplain during the upcoming Map Modernization process due to occur in 2008, at the earliest. Laura further explained that a floodplain analysis would be required (in accordance with Section 3-2-13 of the Ravalli County Subdivision Regulations) and recommended that Mr. Nelson contact Larry Schock at the Department of Natural Resources and Conservation (DNRC) to determine how to best run a floodplain analysis (HEC RAS model) on an alluvial fan. A floodplain analysis was never submitted.

On June 5, 2006, before staff had the opportunity to provide a written deficiency regarding the floodplain analysis requirements for the subdivision application, Applebury Survey submitted a Subdivision Exemption Application (SEA) requesting a family transfer. In accordance with County policy, staff informed both Applebury Survey and the applicant (orally) that the use of the family transfer was to be used to gift a parcel to an immediate family member and that the subsequent transfer of one of the newly created parcels was subject to refusal by the Ravalli County Clerk & Records Office. A "Notarized Request for Family Transfer Form" was signed by the applicant, thus showing an understanding of the policies in effect and enforced by Ravalli County.

Prior to the public meeting on this proposed family transfer, staff discussed it and had some concerns that this proposal might be an attempt to evade subdivision review, given the fact that the review had already begun. However, in talking with the applicant, staff was impressed that she truly intended this to be a transfer to her son, which is the purpose of the family transfer exemption. During the public meeting on the proposal, staff discussed the fact that this division had started the subdivision application process, but the applicant had decided she wanted to transfer the lot to her son and therefore, the proposal was approvable. The family transfer was approved by the Ravalli County Planning Department on June 22, 2006 (SEA-06-101). The approval letter dated June 22nd and addressed to DeAnn Johnson stated, "Please take notice that the County Attorney has expressed to the Clerk and Recorder's Office that a transfer on one of these lots, including the remainder, is presumptively invalid and subject to refusal."

At this time there are a number of options that Ms. Johnson and Mr. Renstrom could consider pursuing, which include the following:

- The properties in question can be retained by the current owners.
- Planning Department staff understands that the Clerk and Recorder's Office has indicated the owner of the remainder parcel may sell that parcel in accordance with the Ravalli County Subdivision Regulations adopted November 20, 2006.
- The owner may submit a Subdivision Exemption Application to aggregate the two newly created parcels back into the original tract, at which point, the single tract may be kept or conveyed.
- The owner can reinitiate the subdivision process. The applicant would be required to submit materials, including a floodplain analysis, in accordance with the Ravalli County Subdivision Regulations adopted November 20, 2006, as amended. The County has currently been meeting all required deadlines for subdivision review. Once the application was deemed sufficient, a decision on the subdivision by the Board of County Commissioners would be made within thirty-five (35) working-days of the receipt of the complete application submittal. Please be advised that payment of new fees would be required.